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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

JOHN COFFEE, MEI-LING MONTANEZ,  
 and S.M., a minor by MEI-LING  
 MONTANEZ, S.M.'s parent and guardian, on  
 behalf of themselves and all others similarly  
 situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03901-BLF

**PLAINTIFFS' RESPONSE TO  
 DEFENDANT GOOGLE LLC'S  
 OBJECTION AND MOTION TO STRIKE  
 PLAINTIFFS' PROFFER RE: MOTION TO  
 DISMISS FIRST AMENDED CLASS  
 ACTION COMPLAINT [ECF NO. 80]**

**CLASS ACTION**

District Judge Beth Labson Freeman  
 Courtroom 3, 5th Floor, San Jose  
 Magistrate Judge Susan van Keulen  
 Courtroom 6, 4th Floor, San Jose

Complaint Filed: June 12, 2020  
 Trial Date: Not Set

**JURY TRIAL DEMANDED**

1 Plaintiffs John Coffee, Mei-Ling Montanez, and S.M., a Minor by Mei-Ling Montanez,  
2 S.M.'s parent and guardian, on behalf of themselves and all others similarly situated, submit the  
3 following response to Google LLC's Objection and Motion to Strike Plaintiffs' Proffer Re: Motion  
4 to Dismiss First Amended Class Action Complaint. *See* ECF No. 80.

5 In response to the Court's questioning during oral argument about whether any of the  
6 Plaintiffs paid money directly to Google for loot boxes, Plaintiffs' counsel inquired of their clients.  
7 Although Plaintiffs contend it is irrelevant whether they purchased loot boxes with fiat currency  
8 (money) or with virtual currency (property) pursuant to an unfair business practice where use of fiat  
9 currency is part of the improper sales practice, the Court asked the question and Plaintiffs' counsel  
10 found out the answer.

11 Because the issue arises on a motion to dismiss, which is not an evidentiary motion, Plaintiffs  
12 presented a proffer of what they could allege in good faith should the Court find the distinction in  
13 the manner of payment is relevant. This is not intended to be evidence to establish a fact any more  
14 than an allegation in a complaint is evidence. Therefore, Google's evidentiary objections are  
15 inapposite.

16 Nonetheless, most telling is what Google fails to say in its objection. Google does not dispute  
17 that Plaintiff Coffee directly purchased loot boxes from Google with fiat currency. It also fails to  
18 present any evidence or proffer of its own that Exhibit A attached to the Proffer is anything other  
19 than a payment record generated by Google which it provided to Plaintiff. Rather than concede a  
20 fact known to it, Google attempts to hide its conduct behind inapposite objections. Further, contrary  
21 to statements made by Google in its objection, the First Amended Complaint alleges Plaintiff Coffee  
22 purchased loot boxes in the very games identified in the Proffer. *See* FAC, ¶ 11 ("While playing ...  
23 Puzzles & Dragons ... and Clash Royale, and as a result of Defendant's conduct, Plaintiff lost money  
24 and property by purchasing 'loot boxes'..."). Google's questionable tactics underscore the reason

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1 Google should be required to answer the fact intensive First Amended Complaint and discovery  
2 should proceed.

3 Google's objections should be overruled and its motion to strike should be denied.

4 Respectfully submitted,

5 Dated: November 8, 2021

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7 By: *s/ Timothy G. Blood*

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16 *Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 8, 2021.

*s/ Timothy G. Blood*

TIMOTHY G. BLOOD